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Jannette Elwood^a & Laura Lundy^a

^a School of Education, Queen's University Belfast, University Road, Belfast, UK

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Revisioning assessment through a children's rights approach: implications for policy, process and practice

Jannette Elwood* and Laura Lundy

School of Education, Queen's University Belfast, University Road, Belfast, UK

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The linkage between the impact of assessment and compliance with children's rights is a connection, which although seemingly obvious, is nonetheless rarely made, particularly by governments, which, as signatories to the relevant human rights treaties, have the primary responsibility for ensuring that educational practice is compatible with international children's rights standards. While some jurisdictions are explicit about an adherence to children's rights frameworks in general policy documentation, such a commitment rarely features when the focus is on assessment and testing. Thus, in spite of significant public and academic attention given to the consequences of assessment for children and governments committed to working within children's rights standards, the two are rarely considered together. This paper examines the implications for the policy, process and practice of assessment in light of international human rights standards. Three key children's rights principles and standards are used as a critical lens to examine assessment policy and practice: (1) best interests; (2) non-discrimination; and (3) participation. The paper seeks new insights into the complexities of assessment practice from the critical perspective of children's rights and argues that such standards not only provide a convenient benchmark for developing, implementing and evaluating assessment practices, but also acknowledge the significance of assessment in the delivery of children's rights to, in and through education more generally.

Keywords: assessment; testing; children's rights; equality; participation

Introduction

Assessment is a powerful umbrella term that incorporates a diverse range of actions and processes. These include formal evaluations of children's learning (e.g. tests, teacher assessments, examinations, etc.) as well as informal judgements, both tacit and explicit, that routinely occur in classroom interactions and in other educational settings (Moss et al. 2008). The assessment of children has always been a significant part of the educational fabric of schooling. The ways in which assessment then affects children's learning and the impact this has on their life chances as they progress through school are well documented and the subject of much research (Black and William 1998; Broadfoot 1996; CERI 2005; Koretz 2008; Stobart 2008). A focus in recent years in the UK has been the fact that it has the most frequently tested children in the world, with it being estimated, for example, that 'the average pupil in England will take at least 70 tests during a school career' (HoC 2008, 52). From a very early age children are exposed to a programme of formal testing and this continues across

*Corresponding author. Email: j.elwood@qub.ac.uk

their school lives (Stobart 2008; Whetton 2009). This has generated political, academic and public concern that children are suffering unduly through the amount of testing they experience and that this in turn has adverse consequences for their overall experience of schooling and their general welfare (Alexander 2009; HoC 2008).

The fact that assessment practice has been widely reported to have significant adverse impact on children's education and their health and well-being prompted the United Nations Special Rapporteur on the Right to Education to suggest that the UK's system of testing was in breach of international children's rights standards (Woodward 2003). Indeed, more recently a UK teachers' union has raised the question as to whether the constant testing of children may be a breach of their rights (Blower 2010). The link between the impact of assessment and compliance with children's rights standards is a connection, which although seemingly obvious, is nonetheless rarely made. This is surprising, not least in relation to government, which, as the signatory to the relevant international treaties, has the primary responsibility for ensuring that educational practice is compatible with international children's rights standards. In recent times, the devolved governments of the UK have committed to a vision for childhood within national strategies for children. While this has been acknowledged explicitly in children's strategies across the UK's four jurisdictions (DCSF 2009b; DECELLS 2009; OFMDFM 2006; SEED 2009), it is apparent from a review of the policy literature that this explicit commitment to children's rights begins to evaporate when the focus moves to education generally and assessment in particular (see, e.g., DCSF 2009a).

Thus, in spite of significant public and academic attention given to the consequences of assessment on children and that government is committed to acting in a manner that is consistent with children's rights standards, the two are rarely considered together. Thus, this paper will examine the implications of international human rights standards for assessment practice. In particular, we will use key children's rights principles and standards as a critical lens to examine assessment policy and practice. The overall aim is to seek insights into the complexities of assessment practice from the important but neglected perspective of children's rights. The paper begins with an overview of the relevance of international human rights laws for the assessment and testing of children. These are then explored more fully through a focused analysis of key children's rights principles and their implications for assessment policies and practices. The paper concludes with some reflections as to what a rights-based approach might mean for assessment and the implications of this for policy, processes and practice.

The application of children rights law to educational assessment

The UK government is a signatory to a series of legally binding international human rights treaties. The two which are most relevant to the issue of children's rights and assessment are the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (CRC), both of which contain an explicit right to education as well as a general prohibition on discrimination. Since October 2000, the Human Rights Act 1998 has made it unlawful for public bodies (which include government departments, curriculum and assessment agencies (e.g. Qualifications and Curriculum Development Agency [QCDA], Council for the Curriculum, Examinations and Assessment [CCEA], DCSF) and schools to act in a way that is incompatible with ECHR rights (Bradley 1999). It has also enabled individuals who think that under the ECHR their rights have been breached to make a complaint in the UK's domestic courts (Harris 2005; Kilkelly 2001; Lundy 2004). The CRC contains a more comprehensive

statement of rights for children, most notably in its inclusion of two innovative principles: first, that in all decisions that are made about children, their best interests must be 'a primary consideration' (Article 3), and secondly, that children who can express a view have a right to have that view given 'due weight' in all matters affecting them (Article 12) (Fortin 2003). However, a perceived limitation of the CRC is that individuals cannot make complaints about breaches of their rights to a domestic or international court (Freeman 2000). The primary enforcement mechanism is a system of periodic reporting to the United Nations Committee on the Rights of the Child (the Committee). The Committee's last report on the UK's progress in implementing the CRC drew attention to a range of educational issues including the significant differences in attainment of children from lower socio-economic groupings (UN Committee 2008).

Assessment, testing and examinations are not mentioned explicitly in any of the international human rights treaties. However, education is generally accepted to cover a wide range of aspects of children's schooling. For example, Article 1(2) of the UNESCO Convention Against Discrimination in Education states that education 'refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given'. At the outset, the European Court of Human Rights acknowledged that the right to education was not simply one of access to institutions. In its earliest decision on the right to education, *The Belgian Linguistics Case* (European Court of Human Rights 1968), it stated that it would apply, for example, to the right to recognition for one's studies. Since then, there has been a number of decisions challenging assessment practices, most notably the landmark decision of *DH vs. Czech Republic* (European Court of Human Rights 2007) in which the court decided that a system for determining access to special schools which relied on a biased educational assessment process discriminated indirectly against Roma children.

There can be little doubt that international human rights law applies to assessment practices and that the UK has publicly committed and is legally bound to ensure that what happens to children is compatible with fundamental human rights standards. In the sections which follow, we analyse three of the most relevant human rights principles in the CRC and reflect on their implementation within the UK. These are: the best interests of the child as a primary consideration (Article 3), non-discrimination (Article 2), and children's right to have views given due weight (Article 12). These three provisions (along with the right to life, survival and development in Article 6) enjoy special status in that they are acknowledged to be the cross-cutting principles of the CRC; they are not only rights in themselves but should be considered in the implementation of all other rights (UN Committee 2009, 5). In the analysis which follows, we consider their implications for assessment practice separately. It should, however, be borne in mind that human rights provisions are recognised to be indivisible, inter-dependent and inter-related. Thus, for example, a decision on what is in a child's best interests cannot be divorced from the child's right not to be discriminated against (for instance, on the basis of gender) nor from their right to have their views heard on matters affecting them.

Assessment in the light of three fundamental children's rights principles

Best interests

Article 3(1) of the CRC states that: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

authorities or legislative bodies, the best interests of the child shall be a primary consideration'. This requires public bodies to undertake a systematic consideration of: 'how children's rights and interests are or will be affected by their decisions and actions' (UN Committee 2003, para. 12). The principle in Article 3 requires that children's interests are 'a' primary consideration, not 'the' primary consideration (Freeman 2000). This one word difference, hotly contested during the drafting of the CRC (Detrick 1992), means that children's best interests are not necessarily predominant and that other factors such as economic costs or other public interests might outweigh a child or children's best interests. Thus, although the principle is simple to state, it can be difficult to apply in practice because of the range of 'personal, social, economic and other factors that determine the perception of what is in a child's best interests' (McGoldrick 1991, 136). However, a good point in determining what is in children's 'best' interests is the CRC itself (Kilkelly and Lundy 2006), an approach which is based on the presumption that it is not in children's best interests to breach their other recognised human rights.

One of the most fundamental aspects of a child's best interests in the context of assessment is whether their experience of assessment practices through the education provided meets the standards set out in Article 29 of the CRC which defines the aim of education to include: 'the development of the child's personality, talents and mental and physical abilities to their fullest potential'. In its General Comment on the Aims of Education, the Committee has stated that the goal of education is to empower the child by developing his or her own skills, learning and other capacities, human dignity, self-esteem and self-confidence (UN Committee 2001). It has been queried whether the current systems of assessment in the UK are consistent with this human right-compliant vision of education. The Special Rapporteur for Education in her report on the education system in England in 2003 raised concern that educational policy in this area is out of step with what the UK government has promised to deliver to its children from a human rights perspective (UN Committee 2003).

One of the main assessment systems featured in debates about the negative impact of assessment on children is the English national curriculum assessment programme for pupils up to the age of 14 (see Whetton 2009 for a review). The proponents of national testing have argued that before its implementation there were no 'objective and consistent performance measures which gave the public confidence about expected standards in primary schools or the intermediary years' (HoC 2008, 10). What the national assessment system promoted, therefore, was a programme of reliable and objective measures of standards achieved by pupils at key stages of their schooling. This was seen to be in opposition to the previous situation where information on standards of children's progress was practically non-existent and which 'did not provide consistent quality of education across the system' for all children (HoC 2008, 10). Thus, such a position argues that there is a direct link between national testing and the raising of educational standards (Black 2001) and that tests provide a standardised and common approach to evaluating children's achievements. This in turn promotes a culture of high standards in schools, develops better understanding of learning amongst the teaching profession and provides pupils with an equal entitlement to a minimum standard of curriculum and assessment regardless of their location or context. Such arguments have value in that the goals of equality of provision and experience aim to ensure two key factors: first that all children, irrespective of their situation in life, are entitled to exposure to a common curriculum and assessment programme, and second that the primary interest of children is balanced alongside that

of value for money and the public interest for better standards of schooling for all pupils.

Madaus (1988) reminds us, however, of a fundamental principle with regard to the use of assessments and their social impact: 'the more any quantitative social indicator is used for social decision making the more likely it will be to distort and corrupt the social processes it is intended to monitor' (89). Research has shown that over the last 20 years the programme of national assessment has had a chequered history (Whetton 2009) and subsequently a very different and more adverse impact to that envisaged. Commentaries on the legacy of the national assessment programme suggest that the tests' technical quality is questionable (Newton 2009); that they have had an adverse impact on teachers and pupils (Reay and Wiliam 1999; Wyse and Torrance 2009) and that they have distorted the teaching and learning process in the primary and middle years (Alexander 2009; Black 2001). Thus, national assessments (social indicators) have been used to maximise outcomes for accountability and the monitoring of standards (the social decision-making) with often dire consequences for schools, teachers and pupils (Stobart 2008). Moreover, the functions of national assessments have become multiple and varied and have gone well beyond the uses for which they were initially developed (DES 1988; HoC 2008; Newton 2007). We are left, therefore, with considerable tensions between the purposes for which the assessment was designed (e.g. knowing/gaining information about what a child has learnt), the inferences made about the outcomes obtained (e.g. adjusting curriculum provision or teaching in response to performance on assessments) and the uses to which the results are put (e.g. selecting pupils for a particular type of schooling, setting national targets for schools, ranking schools in order of achievement on targets, closure of underperforming schools). It is within these tensions between the purposes and uses of assessment where the goals of assessment are misaligned from those of education as outlined within Article 29 and 3(1) above.

The uses to which national tests results are put actually raise significant issues about the robustness and the impact of the inferences made. One underlying assumption about the results from these tests is that all children have had the same opportunities to learn in order to do well (access to good teaching, the whole curriculum, good preparation). Research (Gipps and Murphy 1994; Murphy and Elwood 1998) shows that such an assumption is flawed and that the educational 'playing field' in relation to assessment and testing within which children find themselves is not level nor equal in the opportunities they experience in order to succeed. Tomasevski (2006, 103) argues that:

The basic feature of every education system is that it selects the few who make it to the pinnacle of the education pyramid and excludes the many who start at the bottom but do [not] make it all the way up ... failures are necessary because each step upwards the education pyramid accommodates fewer people. To avoid becoming a failure, small people whom we call children have to adapt to what is required of them to move up.

Assessments are key artefacts that provide information that is used to make selections of children to the next level of education; some children adapt to these cultural artefacts more easily than others (either through their own agency and/or through the help of others) to provide good performances on assessments and thus to succeed at school. Therefore, we might argue that a 'one-size-fits-all' assessment system is not in all children's best interests and it is to this notion of inequality and discrimination that we now turn.

Non-discrimination

The right not to be discriminated against in education is a recurring feature of international human rights law. While the UNESCO Convention Against Discrimination in Education is dedicated to the issue, it is more common for the right to be drawn from the application of a general non-discrimination provision to a separately stated right to education. This is the case in the Universal Declaration on Human Rights, UN Convention on Economic, Social and Cultural Rights, Convention Against Elimination of Discrimination Against Women, Convention on the Elimination of Race Discrimination and Convention on the Rights of the Child. The latter provides the most comprehensive statement of the right, requiring States Parties to ensure that education rights are ensured irrespective of 'the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status' (Article 2, CRC). The Committee has repeatedly emphasised the need for non-discriminatory access to the full range of educational opportunities, including assessment.

The most significant opportunity for individual enforcement of non-discrimination in the right to education is, however, provided by Article 14 of the ECHR applied to the right to education in Article 2 of the First Protocol. With the advent of the Human Rights Act 1998, a number of cases have appeared in the domestic courts in which it has been argued that assessment practices have been discriminatory (Lundy 2004). The chance of further cases of this kind appearing and being successful has witnessed a manifold increase in the wake of the European Court of Human Rights' decision in *DH and others vs. Czech Republic* (2007). In this case, it was argued that a system of assessment of special educational needs which resulted in 50% of children of Roma origin being placed in special schools was unlawful under the ECHR. The Czech Republic attempted to justify the treatment of the children on the basis that they had been allocated to the special schools on the basis of the results of objective tests. The court considered that, 'at the very least, there is a danger that the tests were biased and that the results were not analysed in the light of the particularities and special characteristics of the Roma children who sat them'. In these circumstances, the tests in question were not accepted as justification for the impugned difference in treatment. The significance of this decision and other similar decisions with regard to culturally biased assessments in other jurisdictions cannot be underestimated (Russo and Osborne 2008). Not only is the definition of discrimination in human rights law thus expanded, but it opens the door for other cases challenging inequalities in assessment practice to be initiated on the basis of statistical evidence of disproportionately adverse impact (Hobcraft 2008).

Organisations engaged in assessment development are under obligation to design assessments that are efficient, reliable, valid and fair for all candidates. Generally, test developers align their products and practices to sets of professional technical standards and use these guidelines and codes of practice to validate and support assessment and testing practice (AERA/APA/NCME 1999; *The Code of Fair Testing Practices in Education* 2004). What this means in practice is that tests are normally pre-tested on 'similar' populations to those that will take the test so that their reliability (internal consistency of items, fluctuations in student performance, variations in scoring) and their validity (any inferences based on the test scores) are within certain limits (Koretz 2008) and that outcomes will be obtained as fairly and objectively as

possible so that confidence in them can be maintained. Effective validation of tests depends on the range of sub-groups (e.g. boys and girls, children from different ethnic groups, children from different social backgrounds) involved in the pre-testing of items from which the final test is constructed. It is often the case that not all sub-groups are represented in the pre-testing sample (as was the situation in *DH vs. Czech Republic* above) which in itself affects the validity of the test (Koretz 2008). Procedures are also followed to make sure that tests are not biased in any way that may disadvantage any one group of students (either defined through sex, ethnicity, socio-economic status, language use, etc.). Generally, the way in which bias is considered is through statistical procedures that consider whether the individual test items are problematic for different sub-groups of test takers (Willingham and Cole 1997). Other, more qualitative ways of looking at bias have been developed (see Zucker, Sassman, and Case 2004) which include the use of test-takers' insights into problematic items as a more effective way of dealing with the notion of bias. But as Koretz (2008) cautions us, the techniques for identifying bias are limited and evaluations of potential bias are often imperfect. Further, notions of bias are often considered in simplistic ways that really belie the complexity of the underlying situation (Gipps and Murphy 1994, 18–19):

Differential performance on a test, i.e. where different groups get different score levels may not be the result of the bias in the assessment; it may be due to real differences in performance among groups, which may in turn be due to differing access to learning ... or it may be due to real differences in the group's attainment on the topic under consideration ... the two groups may well have been subject to different environmental experiences or unequal access to the curriculum. This difference will be reflected in the average test scores ... [and] a test that reflects such unequal opportunity in its scores ... could be said to be invalid.

It is not our intention to offer an extensive critique of the limitations of aspects of bias and fairness in testing and assessment as these can be found elsewhere (see Gipps and Murphy 1994; Willingham and Cole 1997 for comprehensive reviews) but our argument is that even though enough is known about the limitations of the technical aspects of tests and assessments, they are still presented as objective instruments that tell us something valid about the child taking the test and which are neutral enough to have no impact on the outcomes observed. As Tomasevski (2006, 103) has argued:

[The] ... prerequisites for moving upwards [in education] are apparently objective and justified, and are rarely challenged as a violation of the equal right to education. And yet the very design of education denies an equal opportunity to reach the pinnacle to the majority of those who start school.

The consequential and differential validity of assessments (i.e. the impact of the inferences made from results for different groups of children) are of considerable importance for the interpretation of assessment outcomes. Choosing what to assess and how to assess it ultimately impacts on children's performances and how they achieve. The assessment techniques chosen for any testing purposes become linked to the validity of the assessment, not only in whether they are the best ways to assess the knowledge content and skills, but also because assessment techniques themselves have social consequences. Furthermore, how assessments are then rolled out into schools and the decisions that are made around them (i.e. who gets entered and who does not) is also problematic from a children's rights perspective.

While non-discrimination may be explicitly addressed by testing agencies, research has shown that discrimination seems to be at play in the ways in which tests and assessments are designed and structured (Twist and Sainsbury 2009) and how they are implemented and used in schools (Elwood and Murphy 2002; Gillborn and Youdell 2000; Murphy and Iverson 2008). In theory, no child is denied access to assessments and resulting qualifications but decisions about what qualifications are available to children, and at what level, are taken by teachers well in advance of children taking the assessment. The legacy of assessment in schools is such that before children get to the stage where final decisions are made about levels of entry, the results of many assessments already completed will have influenced teachers' decisions in determining what curriculum students are exposed to, what group or banding they will be assigned to and ultimately what overall educational experience they will receive.

Research has shown that numerous factors come into play when teachers make decisions about the level of tests and qualifications that are available to students in schools (Gillborn and Youdell 2000; Stobart et al. 1992). Thus, assessment programmes and structures tend to interact with teachers' views and perceptions of children's achievements with profound implications for equality of treatment and access to higher-level success. For example, in relation to gender, before children get to the stage of taking national curriculum tests decisions have already been made based on teachers' perceptions of the limits of boys' and girls' achievements (Elwood and Murphy 2002). Furthermore, schools' considerations of how to maximise results on national benchmarks (Cooper and Dunne 2000) will also come into play. These decisions are reflected in differential access to the full curriculum in certain subjects through setting and banding procedures and also variations in opportunities to obtain higher grades through differential entry of boys and of girls into the higher levels of qualifications. A further example is in relation to Black and ethnic minority students. Gillborn and Youdell (2000) have shown that decisions about access to curriculum and level of qualifications interact significantly with ethnicity in a negative way. In their study of two inner-London schools, they found that more Black students were entered for lower levels of national curriculum tests and qualifications than children from other ethnic groups. The consequences of schools' and teachers' practices for children's future educational opportunities and success are significant in different ways for different groups of children. The Committee on the Rights of the Child has also recognised the relationship between these decisions and children's right to be heard and best interests, observing that:

In decisions about the transition to the next level of schools or choice of tracks or streams, the right of the child to be heard has to be assured as these decisions deeply affect a child's best interests. (UN Committee 2009, 25)

Assessments are structured in particular ways to enhance their validity and reliability; however, such structures then influence how these assessments are delivered and organised in schools and the curriculum and teaching to which students get access. Thus, assessment structures and techniques can discriminate against different groups of children depending on how teachers perceive their abilities and how they think they will ultimately cope with the demands that the assessments make. It is these decisions that affect the opportunities that individual children have to succeed and how far they can climb up the pyramid of educational success.

Participation

Article 12 of the CRC requires States Parties to ‘assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child’. Children’s right to have their views given due weight in all matters affecting them is considered to be a cornerstone of the CRC, reinforcing the status of the child as an active participant in the promotion, protection and monitoring of their rights (Fortin 2003; Freeman 2000). The right applies to all aspects of education and all levels of decision-making from government policy through school policy to classroom practice (Lundy 2007). The Committee on the Rights of the Child has emphasised that the right should be anchored in ‘the development of policies and services, including through research and consultations’ (UN Committee 2005, para. 14) and that it applies to all children, even very young children. The Committee has only given detailed guidance on what this might mean in practice, emphasising that processes must be, *inter alia*, transparent, voluntary, respectful, relevant, inclusive and accountable.

The UK’s record in implementing this right within education has been criticised by the Committee’s consecutive reports (UN Committee 1995, 2002, 2008). As a result of this, there has been a range of government initiatives to involve children in decision-making in education, including new statutory obligations on public authorities to consult children in policies that affect them directly (Harris 2009). Consultative groups have been established at a national level (e.g. Learning and Teaching Scotland’s Young People’s Advisory Group and DCSF’s National Student Panel) and there has been an increase in the number of school councils that have formed, many of which are linked to national school council networks such as Schools Council UK. Likewise, there has been significant academic interest in the concept of pupil voice and in practices that enable children to participate in, and be consulted on, their learning (Flutter and Rudduck 2004; Noyes 2005).

In spite of this, evidence of the impact of Article 12 in the context of assessment practice is difficult to see. There is a limited history of children’s involvement in decision-making within the field of assessment at any level, whether within policy formation, qualifications and assessment development and/or school- or classroom-based initiatives. Many initiatives in changes to assessment policy and practice have taken place since the UK ratified the CRC – yet we are still to see, as a matter of course, the involvement of children in the decision-making with regard to the assessments that they are statutorily required to take or the qualifications for which they are entered. That is not to say that the obligation to consult children and young people is completely ignored by those agencies responsible for the development of assessments and qualifications. However, instances of meaningful engagement appear to be rare.

A notable exception at the policy level is the new Office for Qualifications (Ofqual) in England.¹ Ofqual’s main aims are to regulate national qualifications that must be ‘of high quality ... fit for purpose, command public confidence and are understood by those who take them and use them’ (Ofqual 2009). As part of their preparatory work they have created a number of learner panels that span the full age range of learners – from primary children to young people and adult learners. Their aim is to get at what children and young people think about the qualifications, tests and assessment systems in England:

Learners are at the heart of all that Ofqual does, so listening to them directly is essential. Only then can we be sure we are creating and maintaining a system which fits their needs. (Ofqual 2009)

While this approach is welcome and engagement and consultation seems to be happening, it has not been established from an explicit children's rights perspective. Such a perspective not only requires consultation to take place but also provision of a designated audience to which children's views can be directed and a transparent process which ensures that such views are able to influence policy and practice change in some way (Lundy 2007). Thus, while evidence of what young people think about the assessment systems that affect them across a range of ages is being collected it is not clear how Ofqual will act on this input and how it will feed into their own planning and development work, i.e. how the views of children will not only be heard but also given due weight.

With reference to awarding bodies and national agencies responsible for curriculum and assessment development, there has been some history of gathering learner perspectives (Zucker, Sassman, and Case 2004). For example, children's perspectives have been gathered in relation to reviewing items to improve their effectiveness. This practice, however, is not widespread and also has been resisted in terms of cost and efficiency (Koretz 2008). Generally, there is only lip-service paid to acknowledging the need to include children's and young people's voices more widely at the level of qualification development so that the assessment systems they encounter can best meet their needs. This acknowledgement is often accompanied by hesitation as to whether children and young people are best placed to determine how their examinations are developed and implemented, the structure and content of their qualifications and the best way in which to assess the subjects they study. It is of considerable interest that given the implementation of new agreed specifications for A levels (starting September 2009), and GCSEs (starting 2010) with their associated, significant changes for students who take these examinations (A* at A level, controlled assessments in GCSEs, etc.), there is no evidence that children's input was sought as to the usefulness and/or relevance of these qualifications during the process of development, refinement and agreement. Awarding bodies are conscious of improving their engagement with learners and to that extent have instigated learner support sections within their structures (e.g. see Assessment and Qualification Alliance in England; Scottish Qualifications Authority [SQA], Scotland; Queensland Studies Authority [QSA] Brisbane, Australia). These learner support sections do allow for direct interaction between the organisations and young people but they act predominantly as information-giving portals and providers of study resources rather than offering any attempt to consult children in a meaningful way about the actual design and development of qualifications more generally.

At classroom level, current key research and policy directions in the field of assessment are promoting the use of formative assessment (Black et al. 2003; CERI 2005)² to improve teaching as well as learning. Programmes of formative assessment (e.g. 'Assessment for Learning' (AfL)³ (ARG 1999) in England and Northern Ireland) have captured the interest of policy-makers and practitioners and many educational systems worldwide now encourage the use of such practices by all teachers across all phases of education as a way to raise standards and overall student achievement. For example, assessment approaches used in AfL (such as sharing learning criteria and intentions, self-assessment and peer-assessment) aim to give children a greater role in assessment

practice through ‘the active involvement of pupils in their own learning ... and the need for pupils to be able to assess themselves’ (Stobart 2008, 45–6). Thus, children who are engaged with the practices and processes of formative assessment will have a more participatory role in the evaluation of their learning than they would have through summative assessment programmes (Flutter and Rudduck 2004).

However, while the premise of formative assessment programmes, such as AfL, is children being directly involved with the assessment of their learning and being put at the heart of the assessment process, research has shown that, like any socially constructed activity, children’s experience of formative assessment practice is variable across schools and classrooms (Marshall and Drummond 2006). In addition, there is variability of children’s experiences of participation and consultation about the assessment of their learning even within the same school and the extent to which they are truly involved in formative assessment strategies (Leitch et al. 2008). As such, while formative assessment approaches on the face of it offer potential means of delivering a children’s rights-based assessment, they have not been developed from this perspective and may not be implemented in a manner that is consistent with children’s rights. Thus, participation in assessment, as with participation in education more generally, must be ‘inclusive, avoid ... discrimination ... and encourage opportunities for marginalized children to be involved ... it needs to provide equality of opportunity for all, without discrimination on any grounds’ (UN Committee 2009, 30).

Discussion and reflections

Our analysis of assessment practices in the light of international children’s rights standards suggests that, while there is evidence of activity which is consistent with a children’s rights-based approach, the assessment community has not yet engaged with human rights discourse to any great extent. The impetus for change is likely to come from one of several sources. The first is litigation. Cases such as *DH vs. Czech Republic* have opened the doors for further legal cases on aspects of discrimination in education, including those related to assessment practices. Secondly, the devolved governments of the UK are increasingly taking steps to ensure that the principles of the UNCRC are applied across government departments and public agencies (see, e.g., SEED 2009). This manifests itself most notably in the raft of legal obligations, policy documents and guidance on the participation of children in decision-making processes (Harris 2009). Education has been one of the slowest areas of children’s services to engage with the latter and assessment appears to be the last bastion within that (Lundy 2007; Monk 2002). Whether this is due to active resistance, general apathy or just lack of awareness is unclear. Further momentum for change may come from children themselves, many of whom are already harnessing the opportunities afforded by social networking sites to collectively protest about aspects of examinations which they consider to be unfair and to attract media and public support for this (see BBC 2010). The pressure created by such external scrutiny is tangible and the legal obligation to take children’s perspectives seriously is unquestionable. However, we would suggest that a rights-based framework does not have to be seen as a threat or imposition, but rather an opportunity to review assessment in a constructive new light.

In a children’s rights-based approach to assessment, the key focus will be on ensuring that the child enjoys their right to education as stated in Article 29 of the

CRC. In order to achieve this, those with responsibility for assessment will need to ensure: that the best interests of children are a primary consideration in decision-making; that children are offered opportunities to participate meaningfully throughout the decision-making processes; and that opportunities to learn, progress and succeed will be available to all children equally. The Committee has recommended that a rights-based approach requires both child impact assessments and evaluations:

Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy. (UN Committee 2003, 11)

In practice, in the context of assessment, this might be operationalised as follows, with each of the key state actors with responsibility for compliance asking themselves similar types of questions to those outlined in Table 1 at each of the significant stages of the assessment process. These questions are not dissimilar to those that have been posed in other contexts, such as those found in principles of fair assessment (see Rogers 1996 for an example) but they attempt to articulate at three key levels (policy, process and practice) considerations of value and significance to assessment in relation to children's rights.

The purpose of this paper is not to argue for particular forms and types of assessment practice. There is no one right way – no model of assessment which might be argued to be definitively children's rights-compliant. The questions outlined above are offered as non-exhaustive prompts which might guide thinking in this regard. It is apparent that the approaches adopted ultimately will be dependent on the individual children or groups of children affected and the context in which decisions are made. So, for example, it would be simplistic to assume that something as controversial as high-stakes testing is per se in breach of children's rights. The presence of a high-stakes, high-quality external examination system in which all stakeholders have trust, can motivate students and teachers and can provide a transparent and fair way of allocating scarce resources such as jobs, or university places. Likewise, not all approaches which promote formative assessment will necessarily be rights-compliant either. The use of common formative assessment strategies (e.g. sharing assessment criteria, self-assessment and peer-assessment) present more opportunities for children to be consulted and participate in assessment but the more localised nature of such systems changes the relationship between teacher and child within such processes in a way that may have implications for fair assessment, in particular the need to question the extent to which such strategies are in *all* children's best interests.

International human rights standards do not provide a universal approach to assessment. Rather, they provide standards to be implemented by those responsible for the design and implementation of assessment. So, for example, in order to comply with Article 2 of the UNCRC, classroom teachers would need to think through the consequences of practices adopted to differentiate students, such as setting, tiering or more general practices that select students on the basis of assessment outcomes for different educational experiences. Test developers or awarding bodies would also have to recognise their responsibility under Article 12 to consult directly with children

Table 1. Questions in consideration of assessment and children's rights – at policy and practice levels.

	Best interests (Article 3) <i>To what extent are children's best interests a primary consideration?</i>	Non-discrimination (Article 2) <i>Will the decision have adverse impact on any particular groups of children?</i>	Participation (Article 12) <i>Are children engaged meaningfully throughout the decision-making processes?</i>
Government/policy development	<p>What are the problems, if any, with the existing assessment system?</p> <p>What are the potential benefits of the new system as opposed to those already drawn from the current system?</p> <p>Does the present assessment system need to be changed at this time? If so why?</p> <p>Is the amount of assessment within the system appropriate and is it fit for the purpose to which it is put?</p> <p>What are the dominant values framing the system and do they prioritise children's best interests?</p>	<p>Why is this assessment system being chosen over others? And on what evidence?</p> <p>What are the associated monitoring procedures to evidence any adverse impact?</p> <p>How will results be used and to what purpose for particular groups of students?</p> <p>Are all children able to access assessment systems irrespective of context, locations and/or status?</p>	<p>Are children included in processes of consultation and stakeholder groups? Who is designated to listen to children's views in meaningful ways?</p> <p>What administrative mechanisms are in place to optimise the involvement of children in consultation?</p> <p>Are children enabled to form an opinion about policies that affect them in order to contribute meaningfully to consultations?</p> <p>How are children's views feedback into policy-making arenas and are children told how their views have been used?</p> <p>Are children represented on governance/strategic committees?</p> <p>Are they consulted on specification and qualification development?</p> <p>How are children's views meaningfully feedback into the design, development and implementation of tests and examinations?</p>
Test developers/awarding bodies	<p>Are the tests/qualifications developed of value and relevance to children?</p> <p>Are there robust procedures to ensure the quality of assessments for all children?</p> <p>Is there provision within the system for children to access different forms of assessment so they can show themselves to best effect?</p>	<p>Are procedures in place that review and evaluate non-discriminatory assessment development?</p> <p>Are there monitoring procedures in place to review examination/tests for technical and other forms of bias?</p> <p>Are all representative groups included in pre-testing procedures?</p> <p>Do students have the right to appeal directly to the test developer/awarding authority?</p>	

Table 1. (Continued).

	Best interests (Article 3) <i>To what extent are children's best interests a primary consideration?</i>	Non-discrimination (Article 2) <i>Will the decision have adverse impact on any particular groups of children?</i>	Participation (Article 12) <i>Are children engaged meaningfully throughout the decision-making processes?</i>
Teachers	How are school assessment policies prioritising children's best interests? Are mechanisms in place to ensure quality of school-based assessment systems? Are school assessments administered at optimum times? What are the uses to which assessment data are put and are these equally applied to all children?	Do school assessment policies adhere to principles of equality of access and fair assessment? Are there a range of assessment techniques available to students across all subjects and phases of schooling? Are teachers and students aware of those factors that can create bias in assessment practice and products?	Do students have the right to appeal assessment decisions? Are children equal stakeholders in the formation of school assessment policies? Are children meaningfully involved in the design and development of classroom assessment systems: the development of assessment criteria, moderation systems, and reporting mechanisms to parents/guardians and other accountability audiences?

in relation to the processes and products of assessment, acknowledging children's roles as definitive stakeholders in these matters (Lundy and McEvoy 2009). However, perhaps the biggest challenge of all is for central government departments who have a direct responsibility to meet the obligations of Article 29 of the UNCRC. It is from these central educational policies, all of which must include children's best interests as a primary consideration, that assessment practices flow.

It is surprising that the delivery of children's rights in education has not been linked more closely to assessment, given that over the last decade the major debates in assessment have focused on what its role should be in the education of children, and what relationship it has to children's learning (Black and William 1998; James et al. 2007; Mansell, James, and the Assessment Reform Group 2009). Part of the difficulty may be that the focus of these debates has been on the relationship between summative and formative assessment. A knock on effect of this is that the assessment arena has suffered initially from an assumed polarity of these forms of assessment (Black 2001) and more recently has been slow to explore the mutual relationship that may exist by seeing these as descriptions of how assessment is used, not as forms or types (Newton 2007). At its most basic, summative forms of assessment are seen to be in crisis while formative approaches are promoted as the way forward. A rights-based perspective on assessment practice might shift these debates in another direction. The focus would not be on particular forms, types or uses of assessment. Instead, it would bring to the forefront the rights of the individual child with a view to ensuring that assessment is an enabling factor in delivering the aims of education for all children, irrespective of context or circumstance. It would require a redefinition of the relationship between state actors (policy-makers, teachers, test/assessment developers) and children (pupils and students of all ages) as one of duty-bearers and rights-holders; require decision-makers to reflect upon and attend to issues of diversity and difference; and integrate children's views in the formation of assessment systems and evaluations of outcomes.

Perhaps the most important change which might emerge is a recognition of the role of assessment in the delivery of children's right to education. Black (2001, 65) has reflected that educational reformers who 'dream about changing education for the better always see a need to include assessment and testing in their plans and frequently see them as the main aims of their reforms ... as they are both ways of expressing aims and means to promote or impose them'. Like Black, we acknowledge the power of assessment and testing to influence children's education, their learning experiences and therefore their lives more generally. However, this is not always apparent in the visions for education set out by government. In some cases, assessment and testing is ascribed a narrow role – as a means of monitoring and providing accountability – rather than as a way of delivering the vision of preparing 'not just most children but every child to make a success of their life, developing the broader skills, knowledge and understanding that they will need for this future world' (DCSF 2009a, 6). A revisioning of the relationship between assessment and children's rights would acknowledge its potential role as a means of delivering children's rights more generally.

There is much in the children's rights literature and discourse which would be familiar to those with an interest in the application of socio-cultural theories of learning (Smith 2005). For those who are attempting to align socio-cultural approaches to assessment practice (Moss et al. 2008), the concepts of equality, justice and respect for diversity will be of particular appeal. However, while socio-cultural and children's

rights frameworks both provide complementary ways of thinking about these issues, the potential added value of the rights-based approach is that it offers a legal and moral legitimacy as well as practical fora for action (Freeman 2007). This can enable those wishing to effect change to employ the 'moral coinage of rights' to encourage public bodies with responsibility for the assessment of children to take children's rights seriously. However, it is our contention that children's rights standards not only provide a 'convenient benchmark' (Freeman 2009) for developing, implementing and evaluating assessment practices, but there is need to acknowledge the significance of assessment in the delivery of children's rights to, in and through education more generally.

Notes

1. Ofqual has been created through the new Apprenticeship, Skills, Children and Learning Bill (2009). The Bill establishes Ofqual as an independent regulator of qualifications and assessment reporting directly to the UK Parliament. Ofqual will have a significant enforcement role in the arena of qualifications with the power to set conditions, direct awarding bodies where those conditions are not met and remove an awarding body's recognition and with the power to cap fees. Unlike other independent regulators in the UK it will not, at this stage, have the power to fine for non-compliance.
2. Formative assessment is defined as the 'frequent, interactive assessment of student progress and understanding to identify learning needs' (CERI 2005, 21) and that 'innovations which include strengthening the practice of formative assessment produce significant, and often, substantial learning gains' (Black and William 1998, 2).
3. Assessment for Learning has been defined as 'assessment which is embedded in the learning process and which has an emphasis on learners becoming self-regulated and autonomous in their learning – a skill which is developed through self-assessment and classroom dialogue' (Stobart 2008, 145).

Notes on contributors

Jannette Elwood is a professor of education and director of the Assessment and Learning research cluster in the School of Education, Queen's University Belfast. She has researched and written in the areas of social consequences of assessment, especially in relation to gender. Her most recent publication is '*Exploring Girls' Relationship to and with Achievement: Linking Assessment, Learning, Mind and Gender*' in Jackson, Paechter, and Renold (2010).

Laura Lundy is a professor of education in the School of Education, Queen's University Belfast and a barrister-at-law. She is the director of the Children's Rights and Participation in Education research cluster and the interdisciplinary Queen's Research Forum for the Child. She has researched and written in the areas of education law and children's rights.

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